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| 09/993,820 | 11/16/2001 | Darin Prizzi | PRIZZI - 2 | 8704 |

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BY SV

EXAMINER

KING, ANITA M

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

FINAL O.A.

2/1

Office Action Summary

Application No.

09/993,820

Applicant(s)

PRIZZI, DARIN

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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This is the second office action for application number 09/993,820, Towel Holder, filed on November 16, 2001.

Claim Objections

Claims 1, 6, and 7 are objected to because of the following informalities: in claims 1 and 2, lines 8 and 9, respectively, the recitation of "the other clamping member half" should be changed to --the other of the clamping member halves-- for consistency; in claim 6, line 6, the recitation of "each clamping members" should be changed to --each of said clamping members is--, in line 11, --positioned-- should be inserted after "spring," and in line 12, --member-- should be inserted after "clamping" (first occurrence); and in claim 7, line 4, the recitation of "tow" appears to be incorrect and should be --two--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said first pair of split edges" in line 10. There is insufficient antecedent basis for this limitation in the claim. Applicant is suggested to change the recitation of "one pair of split edges" in line 5 to --a first pair of split edges--.

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Claim 2 recites the limitation "said first pair of split edges" in line 11. There is insufficient antecedent basis for this limitation in the claim. Applicant is suggested to change the recitation of "one pair of split edges" in line 6 to --a first pair of split edges--.

Claim 6 recites the limitations "each clamp half" and "said first pair of split edges" in line 10. There is insufficient antecedent basis for these limitations in the claim. Applicant is suggested to change the recitation of "one pair of split edges" in line 5 to --a first pair of split edges-- and the recitation of "each clamp half" in line 10 should be changed to --each of said clamping member halves--.

Claim 7 recites the limitation "said clamp halves" bridging lines 8 and 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the first pair of split edges" bridging lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a hinge member," in line 3 of the claim, is intended to refer to the original recitation of the term "a living hinge member" in line 9 of claim 7.

Claim 10 is redundant, claim 10 basically recites the same limitations cited in claim 8 from which claim 10 directly depends.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1-3, 5, 7, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,611,123 to Prizzi. Prizzi discloses in combination a releasable tube holder (10) and a longitudinal support (40), the tube holder comprising: a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (16, 18) joined together at across a first pair of split edges (20) and separated by a second pair of split edges (20), each of the clamping members provided with at least one separated handle member (22) positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, the clamping member halves being hingedly connected by a living hinge (Figs. 4 and 5) between the first pair of split edges to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members; the longitudinal support supporting a towel (38); the plastic tube having an interior surface (36) which has been serrated; wherein the support is a beach chair having a longitudinal top support; wherein the hinge member extends along and in the direction of the axis of the one pair of straight across split edges hingedly connected; and wherein the hinge member extends axially along the first pair of split edges.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prizzi.

Prizzi discloses that the plastic tube is formed from polyvinyl chloride or similar plastic material. Prizzi discloses the claimed invention except for the limitation of the plastic tube being formed of polypropylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the plastic in Prizzi to be polypropylene for the purpose of providing an alternative mechanical equivalent material of similar rigidity.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prizzi as applied to claims 7 and 8 above, and further in view of U.S. Patent 5,782,090 to Locke or U.S. Patent 5,362,018 to Darr et al., hereinafter, Darr. Prizzi discloses the claimed invention except for the limitation of the living hinge being formed by a groove. Locke teaches that it is known in the clamping art to have a clamp (10) including a pair of clamping members (20 and 30) hingedly connected by a living hinge (18) formed by a groove. Darr also teaches that it is known in the clamping art to have a clamp/clip (30, Fig. 3) including a pair of clamping members (42) which are joined by a living hinge (40) at one pair of split edges and wherein the living hinge is formed by a groove (38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the living hinge in Prizzi to have been formed by a groove as taught by Locke and Darr for the purpose of providing an alternative mechanically equivalent means to permit bending and greater flexibility between the pair of joined clamping members.

Allowable Subject Matter

Claim 6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: the primary reason for indicating allowable subject matter of the above claim is the limitation of the hinge of each of the clamping member halves having a torsion spring positioned between the first pair of split edges of the clamping halves, in combination with the other elements recited in the claim. This combination of limitations is not taught by the prior art of record.

Response to Arguments

Applicant's arguments filed September 16, 2002 have been fully considered but they are not persuasive. Upon further consideration and search, the examiner has made new rejections in regards to claims 1-5 and 7-10.

In regards to the limitation of "a living hinge," the examiner erred in judgment of this limitation. In Figures 4 and 5 of Prizzi, it can be clearly seen that a flexible web connects the first pair of split edges of the clamping members 16 and 18, by definition this is a living hinge. The applicant did not argue that Prizzi does not teach a hinge and thus, by the clarification made above, Prizzi inherently discloses "a living hinge".

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,615,584 to Irish

U.S. Patent 6,098,255 to Kumada

U.S. Patent 6,206,331 to Keith et al.

U.S. Patent 6,467,742 to Pitcher

The above patents all disclose various types of clamping structures including living hinges.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-3597 for regular communications and (703) 308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or

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proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Anita M. King
Primary Examiner
Art Unit 3632

November 23, 2002